

STATE OF SOUTH CAROLINA) BEFORE THE ADMINISTRATOR
) SOUTH CAROLINA DEPARTMENT
COUNTY OF RICHARD) OF CONSUMER AFFAIRS

South Carolina Department of)
Consumer Affairs,)
)
 Petitioner,)
)
) DOCKET NO. 0218
)
) **ORDER**
)
Bertha R. Samuel, Individually,)
)
)
 Respondent.)
_____)

STATEMENT OF THE CASE

This matter came before me by way of the Department's filing and service of a Notice of Hearing and Petition on or about June 24, 2002. The Petition alleges that Respondent Bertha R. Samuel, as an employee of Carteret Mortgage Corporation, falsified a letter from U.S.C. Spartanburg confirming the employment of a U.S.C. employee. The Staff seeks a cease and desist order, a finding that Respondent has engaged intentionally or repeatedly in a course of conduct in violation of the Mortgage Loan Broker Act, and a temporary or permanent revocation of Respondent Samuel's certification to work as a mortgage loan broker. A hearing was held before me on August 15, 2002. At the hearing, the Staff was represented by Danny Collins. Respondent Samuel did not appear. The Notice of Hearing indicates that if Respondent Samuel did not appear the hearing would proceed in her absence. Two witnesses testified, Barbara Jean Sprague and Jane Shuler.

FINDINGS OF FACT

1.) Respondent Bertha R. Samuel was served with the Notice of Hearing and Petition on or about June 24, 2002 by U. S. Mail, return receipt requested (Exhibit 1).

2.) Respondent Samuel was as of October 2001 an employee of Carteret Mortgage Corporation, a licensed mortgage loan broker (Testimony of Shuler; Exhibit 3).

3.) On or about May 14, 2002, Respondent Samuel sought and received a letter verifying the employment of prospective borrower Beatrice Gault, from her employer, University of South Carolina Spartanburg. The letter was dated May 14, 2002 and indicated that Ms. Gault was a teacher assistant in the Roy C. Henderson Childcare Center. It also stated that the position was grant funded and was approved through November 18, 2003 (Testimony of Sprague; Exhibit 2).

4.) Respondent Samuel sent or caused to be sent to lender Aames Home Loan a falsified letter purporting to be from U.S.C. Spartanburg indicating that Ms. Gault would be employed for the next three years rather than through November 2003 (Testimony of Sprague; Exhibit 2).

5.) The falsification came to Ms. Sprague's attention when an employee of Aames called the Human Affairs office to ask about the falsified letter. From his conversation with her it became clear to Ms. Sprague that the letter he was reading from was not generated by her office (Testimony of Sprague; Statement of Sprague to campus police, Exhibit 2).

6.) It is not clear whether the letter was an outright forgery, or whether, as Respondent Samuel stated in a telephone call with Ms. Sprague, the signature was scanned. Respondent Samuel admitted to altering the letter (Testimony of Sprague; Statement of Sprague to the campus police, Exhibit 2). The more likely explanation appears to be that Respondent Samuel

wrote or caused to be written a falsified signature for Ella Mae Bowers, the Human Resources employee for U.S.C. Spartanburg, because the signature of Ella Mae Bowers on the falsified letter does not match any other examples of known Bowers signatures in the file. In any case, Ms. Bowers confirmed that she had not signed the falsified letter (Statement of Sprague, Exhibit 2).

7.) Upon discovery of the falsification by Carteret, the company demanded and received the loan file from Respondent Samuel. She provided it along with a memorandum to Ms. Barbara Zeigler of Carteret Mortgage Corporation on May 22, 2002. In it, she made no specific admission of the falsification, but did state “I am so sorry for what I have done. To put the company in jeopardy of loosing (*sic*) its State License is something I would never do intentionally.” The application also shows that Respondent Samuel is the employee within Carteret who took the application information by telephone from Ms. Gault and her fiancé, Lawrence Thompson (Exhibit 4).

8.) Respondent Samuel was terminated by Carteret Mortgage Corporation by letter of May 23, 2002 from Eric Weinstein, President of the company (Exhibit 5).

CONCLUSIONS OF LAW

1.) I have jurisdiction to hear this matter pursuant to the Mortgage Loan Broker Act, *S. C. Code Ann.* §§ 40-58-10 through-110 (Supp. 2001) and the Administrative Procedures Act, *S. C. Code Ann.* §§ 1-23-310 *et seq.* (Supp. 2001).

2.) Service of process on Respondents was timely and proper pursuant to the Administrative Procedures Act.

3.) Respondent Samuel’s actions in sending or causing to be sent a falsified employment verification letter violates the Mortgage Loan Broker Act in, but not necessarily limited to the

following ways:

a.) *S. C. Code Ann.* § 40-58-70 (1) by misrepresenting material facts or making false promises likely to influence, persuade, or induce a person to make a mortgage loan or a mortgagor to take a mortgage loan;

b.) *S. C. Code Ann.* § 40-58-70 (2) by intentionally misrepresenting or concealing a material factor, term or condition of a transaction to which the broker is a party, pertinent to an application for a mortgage loan or a mortgagor;

c.) *S. C. Code Ann.* § 40-58-70 (3) by engaging in a transaction, practice, or course of business which is unconscionable in light of the regular practices of a mortgage loan broker, or which operates a fraud upon a person, in connection with the making of or purchase or sale of a mortgage loan.

I deem it immaterial to the violation that the falsification was discovered by the lender before the loan closed.

4.) Respondent has intentionally engaged in the above referenced violations of the Mortgage Loan Broker Act.

5.) Respondent Samuel, through the above described actions, has called into question whether she maintains the required financial responsibility, experience, character and general fitness to command the confidence of the community and to warrant the belief that she may engage in mortgage loan broker activity, honestly, fairly and efficiently, according to the purposes of the Act, pursuant to *S.C. Code Ann.* §§ 40-58-60 (A) and -80 (F).

6.) I have previously ruled that a broker or employee found to have participated in a falsified transaction should not be allowed to remain active in the mortgage loan broker

profession. Most recently, I ruled that a broker found to have committed a single act of fraud (arranged a “throw away” second mortgage to deceive a lender) should have a license suspended for six months. *S.C.D.C.A. v. Wingate et al.*, Docket No. 0113 (2001).

IT IS THEREFORE ORDERED that Respondent Samuel cease and desist violating the Mortgage Loan Broker Act, *S. C. Code Ann.* §§ 40-58-10 through -110 (Supp. 2001), pursuant to *S. C. Code Ann.* §40-58-80 (A).

IT IS FURTHER ORDERED that Respondent Samuel’s right to engage in mortgage loan broker activity or to be employed by a licensed mortgage broker in South Carolina is hereby suspended for six months following the date of this Order. Upon the expiration of six months, she may make application to engage in the mortgage loan broker industry and will be evaluated by the Staff for overall fitness pursuant to *S. C. Code Ann.* § 40-58-50.

AND IT IS SO ORDERED.

Philip S. Porter
Administrator

Columbia, S.C.

_____, 2002